



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
(508) 910-1868

AMENDED ADMINISTRATIVE MINUTES
November 5, 2014

6:10 PM: *Chairman Figueirido opened the meeting; Pledge Allegiance to the Flag; Moment of Silence.*

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, , Robert Gardner.
Associate Members: Michael Medeiros, and Rahim Aghai
Director of Development: Deborah Melino-Wender
ABSENT: Member Halim Choubah and Associate Member David Dore

ADMINISTRATIVE

The Board unanimously voted and approved the following Minutes as amended:

- Administrative Minutes of October 14, 2014
- Minutes for Amendment to Special Permit 2014-29 (703 State Road)
- Minutes for Special Permit 2014-30 (869 Smith Neck Road)

Chairman Figueirido noted that the members' packets contained zoning changes that were passes at Town Meeting. She briefly reviewed these with the Board. Chairman Figueirido also noted that these changes need to be approved by the Attorney General. If the ZBA receives a case related to these changes prior to the AG approval, the Chairman stated that she will consult with Town Counsel, but she believes that the approved changes will still apply. She also asked Ms. Melino-Wender to include copies of Articles 8 and 9 from Town Meeting which also include zoning changes.

ANNOUNCEMENTS

The next meeting is a joint meeting with the Select Board, scheduled for Monday, November 17, 2014 at 6:45 PM regarding an amendment application to a 1990 Special Permit and 1990 Variance granted to Dartmouth Power Associates Limited Partnership. The Special Permit had been granted by the Select Board (File No. SP 90-1), and the Variance had been granted by the Zoning Board of Appeals (Case #1990-33). A regular meeting of the Zoning Board of Appeals will be held on Tuesday, November 18 at 6:15 PM.

The Administrative portion of the meeting was adjourned at 6:23 PM.

Respectfully submitted;
Deborah Melino-Wender
Director of Development
Minutes Approved: November 18, 2014

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 Office of the Zoning Board of Appeals
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 (508) 910-1868

MINUTES

DATE OF HEARING: November 5, 2014
 CASE: SPECIAL PERMIT and VARIANCE
 CASE NO: 2014-22
 Petitioner/Applicant: New Cingular Wireless PCS, LLC ("AT&T")
 Property Owner: Thistle Trust LLC, Tenant and Concordia Company LLC, Landlord
 Representative: Edward D. Pare, Jr., Esq. Brown Rudnick LLP
 Representative: Elisabeth Rutkowski, Tower Resource Management
 Subject Property: 300 Gulf Road in the Maritime/Marine Industrial District
 Registry of Deeds: Book 7917, Page 343

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ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, , Robert Gardner, Associate Member, Michael Medeiros, Rahim Aghai and Director of Development Deborah Melino-Wender
ABSENT: Member Halim Choubah and Associate Member, David Dore
ALSO PRESENT: Anthony Savastano, Town Counsel; Consultant David Maxon, Isotrope

OTHERS PRESENT: Attorney Edward Pare other representative parties for AT&T, Attorneys March DeShaies and Neil Smola, and a number of Dartmouth residents.

6:55 P.M. Chairman Figueiredo opened the hearing and announced the continuance of this hearing from the previously continued hearing of September 30, 2014. She noted that the case was first heard on July 8, 2014. The Board had continued the hearing to the present date in order to permit the applicant, the Board's Consultant and Town Counsel to investigate alternative sites. The Board's Consultant would verify or dispute the coverage gaps identified by AT&T. She also noted that the Board has received a significant amount of correspondence on this petition. Many have voice opposition and some have written in support.

To reintroduce the case, she read the legal ad. She explained that the petitioner's application to the ZBA was received on 5/16/2014. She then proceeded to identify correspondence and documents that had been received since the September 30, 2014 public hearing.

Chairman Figueiredo read into the record the list of names and dates of letters that have been received by the board.

NEW CORRESPONDANCE AND DOCUMENTS RECEIVED SINCE SEPTEMBER 30, 2014

- 1 additional letter from residents in opposition to the proposal
- 3 letters from residents in support of the proposal
- Letter from the Dartmouth Historical Commission dated November 4, 2014
- A petition of residents in opposition to the proposal; this petition originally had 441 signatures – it now has 503 signatures
- RF Report Proposed Wireless Facility by C2 Systems dated October 20, 2014
- Calculated Radio Frequency Emissions Report by C2 Systems dated October 31, 2014
- Untitled color map dated November 4, 2014 showing zoning in the vicinity of the proposed site

- Aerial map entitled "Areas to Avoid Due to Known Archaeological sites Identified During Fieldwork or Class1 Research
- TOWAIR Determination Results dated 11/3/2014
- Affidavit dated November 5, 2014 to the Dartmouth Board of Appeals from Marc R. Chretien of Advanced Engineering Group
- Site Maps of Site Humber MA4323S Gulf Road including:
 1. Sheet T-1 Vicinity Map/General Notes
 2. C-1 Existing Conditions/Plot Plan
 3. Z-1 300' Radius/Ortho Plan
 4. Z-2 Site Plan & Details
 5. Z-3 Compound Plan & Elevation
 6. Z-4 Shelter Details
 7. Z-5 Details
- Photographic renderings for the following pole options
 1. 100' tall Monopole (AT&T equipment at top)
 2. 100' tall Monopole (AT&T at top plus 3 future carriers)
 3. 100' tall Flagpole (36"Ø pole with a 12'x18' flag)
 4. 100' tall Unipole (36" Ø pole)
 5. 100' tall Monotree (106' tip of branch crown)
- Colored maps showing coverage gaps for various alternate sites (8 pages)
- Extension forms and letters from Attorney Pare

Chairman Figueiredo read into the record the letter from the Historical Commission. Town Counsel stated that he had not yet communicated with Mrs. Lund as he just received the letter this day. Chairman Figueiredo asked Mr. Pare for any input. He stated that it is part of their process, but since the location is proposed to move, the current information would not be relevant – the archaeological report would be based on the final location. He stated that AT&T will forward the requested information to the Historical Commission when it is available.

Chairman Figueiredo asked Attorney Pare to present any new or additional information.

Attorney Pare noted that the applicant conducted the crane/balloon test on August 28th and that these materials should have been provided to the Board and to counsel. He noted that they have been able to reduce the height from 150 feet to 100 feet and that all materials now presented show the proposed tower at 100'. Attorney Pare said they considered a number of different design options and that those were included in the materials presented to the Board.

Attorney Pare informed the Board that the original proposed location had to be moved due to archeological findings. Initially, the tower was proposed to be located at 75' off both property lines; as a result of several different findings, much of the south area of the property had to be eliminated. The proposed new location, which is acceptable to the property owner and which also works with respect to radio frequency, is 700' to the west from the original proposed location. The new proposed location is at the site of a present temporary Quonset type building, which will be relocated. This location is now 320' from the property line of the furniture operation (it was originally 75') and 475' from the property line of the school and 490' from the school building itself. Additionally, it is 100' from the property line at the west, where the property owner has not expressed any opposition. He stated that the tower is tucked in better within existing structures on the property and there is more screening at the base. Attorney Pare summarized that they have significantly reduced the height and provided extended setbacks. He noted the ambiguity in the zoning ordinance regarding the setback; one section requires a 100' setback of all structures but in setback chart where the marine

industrial zone abuts a Residence B zone, a 25' setback is required for all structures. He stated that they will shift all the equipment 15' to the east to ensure compliance.

Attorney Pare then addressed the coverage needs. He said that Dan Goulet of C2 Systems refined the coverage based on the drive tests. Mr. Goulet stated there is a significant coverage gap in Dartmouth and reviewed the findings and the gaps and the alternatives to meet the gaps.

Mr. Maxon commented on the presentation. He noted that he looked for sites that were not wetlands or that crossed wetlands. Attorney Savastano said these locations came from him and Mr. Maxon in consultation. Chairman Figueiredo stated Attorney Pare, Attorney Savastano and Mr. Maxon have all been in communication regarding alternative sites and that a lot of sites have been reviewed. Mr. Maxon stated that he is fairly in agreement with the conclusion of the applicant.

Chairman Figueiredo asked for clarification from Mr. Maxon that Mr. Goulet's depictions are accurate in showing areas of coverage and gaps for alternative sites. Mr. Maxon said that his analysis was not exactly the same, but that Mr. Goulet's analysis was accurate.

With respect to the site selection process, Attorney Pare noted that they try to find existing structures first and try to avoid residential areas. He noted on the maps that the Gulf Road property is the only non-residential property which adequately fills the coverage gaps. He noted they are willing to look at other residential properties as a potential site. Mr. Pare then discussed the various design options. Mr. Maxon noted that the photosimulations are good. He stated that there are other designs that can maximize co-location that are much wider structures. Mr. Pare stated that AT&T's application is for a 100' monopole with full antenna array.

Mr. Gardner stated that he has seen the "tree" design for the tower and he feels it would be less attractive than the pole.

Mr. Pare then reviewed the noise affidavit. He also noted the updated TOWAIR report. Mr. Maxon stated the TOWAIR report is good.

Chairman Figueiredo asked if there were questions from the Board regarding coverage. Mr. Medeiros asked how the coverage could change so dramatically with small distance changes in the proposed sites. Mr. Maxon stated that he is comfortable with the applicant's analysis and that his own analysis was consistent with that of the applicant. He noted there is some overlapping coverage that may not be evident. Chairman Figueiredo, Mr. Medeiros and Dr. Aghai asked for clarification on some of the coverage areas. Several members of the public also raised questions, which Mr. Maxon and Mr. Goulet addressed.

Mr. Goulet stated that there was nothing they could do to the existing sites to enhance the service in the area.

Chairman Figueiredo asked Attorney DeShaies, who represents many of those in the audience, to make a presentation.

Attorney DeShaies then made a brief presentation. He noted the September memorandum outlined the concerns of the area residents, including limiting the tower use to amateur radio, and stated that a use variance would be required, but is not warranted. He noted that some sites have not been evaluated and that his clients have identified certain sites that have not been looked at. These include the Dartmouth High School; the Santos property (about 3 lots up from the Concordia), with access off Bakerville Road; the old White Farm Dairy

which has two silos and is owned by Mr. Jenkins. He said that there may be additional sites, but they have not yet spoken with those property owners. He noted that Attorney Pare had indicated a willingness to evaluate some other additional sites.

Attorney Savastano stated that the choice of consideration of additional sites lies with the local zoning authority as to other potential locations. He noted that there are standards that need to be considered. He stated that the argument on use variance is incorrect based on Federal law. This is a 2 part test including (1) is there a gap in coverage? and (2) is there an absence of feasible alternatives? He stated that the burden of proof is on the provider to adequately address – is there a feasible alternative that is more palatable to local zoning officials? He stated that both experts have agreed that there is a gap in coverage. He stated that there is a balancing test and that the courts have looked at a number of different factors – there is no list of standards and underlying facts on a case by case basis. These could include viability of property, technical feasibility, greater zoning relief, conservation restrictions, wetlands, etc. However, once the applicant has presented its efforts, there is a limit on the ZBA ability to keep asking for more sites, particularly in light of shot clock issues. Attorney Savastano said he encourages the ZBA to talk about alternative locations tonight and the ZBA may require a reasonable analysis of alternative locations.

Chairman Figueiredo summarized that Attorney DeShaies is stating that there are 3-5 sites that the residents have identified of which the applicant was not aware. Attorney Savastano stated that Attorney DeShaies also undertake a zoning analysis of the proposed additional sites, including fall zone and lot size, prior to submittal. Attorney Pare requested that the number of additional sites be restricted. Attorney Savastano stated that the Board needs to consider the issue from a zoning stand point.

Attorney Pare stated that they are willing to look at 3-5 practical sites.

Chairman Figueiredo stated that it is up to the three attorneys to determine if the proposed sites are reasonable to explore and will not provide additional problems for the Board. She stated that the visual impact and setback issues would be of most concern. Attorney Savastano stated that consideration of the additional sites should be considered by Attorney Pare and Attorney DeShaies.

Attorney Pare stated that they are willing to look at a reasonable amount feasible locations. He noted that the application for the Gulf Road site will remain unless a feasible alternative site, one which can be approved, is identified.

Chairman Figueiredo stated that the Board should narrow down the types of poles for consideration. Mr. Medeiros asked for an actual crane test to show the neighbors what it would look like. The consensus of the Board was to consider the flag with the pole, the unipole and the monopole, eliminating the monopole with the fully loaded tower and the tree configuration.

Attorney Pare stated that it can be done on November 15th, with the 16th as a rain date. The hours would be 9 AM -3PM.

Several residents addressed the Board. Mr. Pope stated that the group, "Stop Concordia", does not want any type of cell tower on Gulf Road. His group believes there are other locations that will provide the needed coverage and will provide alternatives. Peter Jenkins owner of the Gulf Hill Dairy Barn stated they originally were told that the coverage area of concern was Padanaram and that now they are being told Smith Neck Road and Bakerville Road. He said he believes the cell tower should be on Town land and that the police station is the best location. He suggested that ATT&T be subservient on the tower on Gentry Road and provide the needed coverage. He said he has no problem putting a flag pole on his silo. Jim Sears also addressed the Board. He suggested the DeMello property combined with the police station or a property on Wilson/Middle Street

would provide adequate coverage. Barbara Purdee then addressed the Board. She questioned the number of people actually served by AT&T. Bill McQuiggan also addressed the Board. He said he would like to see a comparative chart and that there are alternative sites that the applicant did not consider. Gary Adriance addressed the Board concerning visual impacts. He stated that his business was subject to certain conditions relating to visual impacts. He stated that approval of the cell tower would be an unequal application of the bylaw. Ray Oswald stated that Mr. Santos has a silo that could be evaluated as an alternative site. Andre Pimental addressed the Board. He expressed concern about the visual impacts of the cell tower. He also expressed health concerns about cell towers and its effect on property values and that this would be a detriment to the area.

Mr. Maxon clarified the issue of amateur radio operators and the inclusion of this in cell tower zoning language and that it is unrelated to cell towers and should be set aside. With respect to market share, the Federal government has made it clear that it wants the wireless system to compete and that the population numbers also represents potential density of use. With respect to a multi-carrier tower, he stated that Zoning Boards tend to expect co-location in order to reduce the number of towers. He also stated that the exposure analysis by C2 is a worst case analysis in order to be conservative.

Mr. Pare stated that they are already on the Gentry tower. With respect to the population counts, he stated that this is based on census and doesn't include street traffic. He noted that the real estate consultant study did not support the concern about market devaluation.

Regarding Mr. Valentine's real estate report, Chairman Figueiredo asked if there were any questions. There were no questions from the Board.

Mr. McQuiggan questioned the results of the report in that it showed that houses closer to the cell towers sold for more. Mr. Valentine stated that he used the data available and that he has does this study in many locations and he has never found an instance of an impact on property values.

The motion was made by Mr. Gardner and seconded by Mr. Medeiros to continue the hearing to December 9, 2014. The motion passed unanimously.

10:00 P.M. Hearing adjourned

Deborah Melino Wender

Director of Development

Zoning Board of Appeals

Date of approval: November 5, 2014



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MINUTES

DATE OF HEARING: November 5, 2014
CASE: AMENDMENT TO USE VARIANCE
CASE NO: 2014-44
Petitioner/Applicant: Susan M. and David G. Brasells Jr.
Property Owner(s): SAME
Representative: Alan J. Heureux, PE
Subject Property: 24 Slocum Road
MAP: LOT(S): Districts Map 132 Lot 44
Registry of Deeds Book: Book 2529 Page 303; Book 9058 Page 166

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ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner, Associate Board Members Michael Medeiros, and Rahim Aghai and Director of Development Deborah Melino-Wender

Absent: Member Halim Choubah and Associate Member David Dore

ALSO PRESENT: Alan J. Heureux, PE, Susan M. and David G. Brasells Jr.

6:33 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Wednesday, November 5, 2014** in Meeting Room 304, Town Hall, 304 Slocum Road, Dartmouth, MA on the Petition of Alan Heureux on behalf of Susan M. and David G. Brasells, who are seeking an Amendment to a Use Variance, Case #2010-20 dated October 1, 2010 in order to add a 212.5 s.f. addition for a waiting area and break room. The property is located at 24 Slocum Road in the Single Residence A District and identified on Assessor's Map 132 as lot 44. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 11.210 Allowed Uses).

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday October 15, 2014 and Wednesday, October 22, 2014.

Chairman Figueiredo noted that the section of the bylaw that was referenced in the legal ad – Section 11.210 Allowed Uses – is a typographical error, since that section of the bylaw relates to a General Business District and the subject property is located in a Single Residence A District. The appropriate citation is Section 4A.210 Allowed Uses Single Residence A District. She noted that this scribner's error does not affect the case.

Mr. Gardner made a motion, seconded by Mr. Medeiros to make a scribner's change to change the bylaw citation to Section 4A.210 Allowed Uses Single Residence A District. The motion passed unanimously.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Michael Medeiros. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Amendment application time-stamped with the Town Clerk on 9/22/2014
- Schedule of Departmental Payment of Fees to Town Collector
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards
- Photographs of Subject Property
- "Site Plan Showing Proposed Building Addition drawn for Susan M. and David G. Brasells, Jr., 24 Slocum Rd, Dartmouth, MA dated September 19, 2014
- Drawings (3 sheets) by Anthony & White dated August 14, 2014
- Letter from Donald Perry, Planning Director dated October 22, 2014

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 10/22/2014

Chairman Figueiredo invited the Petitioner or Representative to present the case.

Mr. Heureux made a brief presentation to the Board. He noted that the owners have operated a hair salon here for 25 years. The requested addition will include a break room for employees and a waiting area for customers. The addition will be on the south side of the building where there is presently a landscaped area surrounding by a low existing retaining wall. Parking requirements will not be impacted. The request will allow more flexibility with the business.

Chairman Figueiredo invited any Board Members to ask questions. Chairman Figueiredo asked for clarification on the number of stations. Mr. Heureux replied four stations. Mr. Gardner stated that the property is extremely well kept. Mr. Medeiros noted that there will not be a back entrance.

Chairman Figueiredo invited public comments regarding this project. Two members of the public spoke in support of the project.

The Board proposed the following findings:

1. Locus property at 24 Slocum Road and is identified on Town Assessor's Map 132, Lot 44 and is located in a Single Residence A District and a portion of the lot is located in Flood Zone AE.
2. Susan M. and David G. Brasells Jr. have owned the property since August 1990.

3. The petitioners seek an amendment to a USE VARIANCE of September 10, 2010 to allow construction of an 8.5' x 25' (212.5 sf) building addition for a waiting area and break room in the existing Hair Horizons Salon. The proposed addition will not be in the flood zone area of the lot.
4. The proposed addition will be to the south side of the salon which abuts an existing retaining wall.
5. No other changes to the subject property are being proposed.
6. The applicant has operated a beauty salon from this location for 25 years. The business was initially a home occupation, then a USE VARIANCE was granted in 2010 (Case #2010-20) for which the Board administratively approved "red-line" changes at its meeting of November 15, 2011.
7. The present facility includes 4 operating stations and a facial room. The salon has five employees.
8. A condition of the USE VARIANCE granted on September 10, 2010 stated that "any future expansion of services would need Board review and approval and allowed services are hair care and facials".
9. The Planning Director has determined that the proposed site plan and addition does not adversely affect the parking layout. Additionally he stated that relief from Section 16 is not required since there is no requested increase in the number of operating hair stations. The Staff finds the applicants have done a fine job with maintain the existing parking lot and landscaping, which is attractive and well done
10. The location of the property is located at a busy crossroad of the Town, which already supports a business (Friendly Pizza) and heavily used athletic Fields (Crapo Field).
11. The proposed addition would not adversely affect any nearby residences any more than the current business operations or existing surrounding uses.
12. There is no opposition for the requested Amendment to Use Variance by any party of interest.

The Board made proposed conditions:

1. Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies before a building permit is issued.
2. The plans of record will include the plan entitled "Site Plan Showing Proposed Building Addition drawn for Susan M. & David G. Brasells, Jr, 24 Slocum Rd. Dartmouth, MA,

dated September 19, 2014 and drawings (3 sheets) by Anthony & White dated August 15, 2014.

3. The conditions of the USE VARIANCE Decision of September 10, 2010 remain in effect.

Chairman Figueiredo asked Board Members for further comments and/or questions.

No further comments or questions by Board Members.

Chairman Figueiredo invited further public comments regarding this project.

No further public comments.

Robert Gardner motioned to close the public hearing which motion was seconded by Michael Medeiros. Motion passed unanimously.

Robert Gardner makes the motion to GRANT the AMENDMENT TO USE VARIANCE based upon the findings as stated and conditions as proposed. Motion was seconded by Michael Medeiros. Motion passed unanimously.

6:47 PM Hearing adjourned

Deborah Molina Wender

Director of Development

For the Zoning Board of Appeals

Date of Approval: November 18, 2014